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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,116	09/22/2003	Kraig A. Kirschner	7234-117/10311003	7648
58688 7590 05/03/2007 CONNOLLY BOVE LODGE & HUTZ LLP P.O. BOX 2207 WILMINGTON, DE 19899			EXAMINER LE, TAN	
			ART UNIT 3632	PAPER NUMBER
			MAIL DATE 05/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/668,116

Applicant(s)

KIRSCHNER, KRAIG A.

Examiner

Tan Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8, 10-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8, 10-12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to Applicant's amendment filed 02/02/07, which has been entered. This application contains 5 claims numbered 8, 10-12 and 14. Claims 1-7, 9, 13 and 15 have been canceled.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8, 10-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,998,691 to Brown in view of US Patent No. 4,733,471 to Rahe.

As to claims 8 and 10, Brown shows a pipe clamp system as depicted on Fig. 1, comprising a pipe of specified outside diameter; a clamp including two bars (21), each bar including a substantially hemicylindrical section (21a), a first straight section (21) on one end of the hemicylindrical section and a second straight section on the other end of the hemicylindrical section, each straight section having a through hole (7) closely spaced equidistant from the hemicylindrical section; and fasteners (12 with nuts 22) extendable through the through holes to retain the two bars together with the first straight sections juxtaposed with the second straight sections, respectively.

What Brown does not appear to express is the hemicylindrical section having radiused inside edges to prevent gouging.

Rahe teaches the inside edge of the hemicylindrical sections being radiused (114,

134) (chamfered end surfaces) (Fig. 6A, 7A for example). Rahe also admitted that such narrow chamfered surfaces are conventionally provided in devices of such generally type. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a radiused inside edges or chamfered edges on the clamp of Brown as taught in Rahe for the purpose of preventing gouging or providing the pipe sliding in and out easily.

Brown also does not specifically recite the inside diameter of the hemicylindrical sections of the two bars being smaller than the specified outside diameter (of CPVC pipe) by not to exceed five percent with the first straight section juxtaposed with the second straight sections, respectively.

Rahe teaches the concept of such (col. 6, lines 24-30). Rahe teaches the clamp members designed with respect to the outer diameter of the tube 46 being the ranges of less than or equal to about 3.5 percent of the outer diameter and greater than or equal to about 0.5 percent of such diameter in order to provide the necessary support which is required in the securing, the amount of friction that can be tolerated in the sliding in and out between the clamp members and outer diameter of the tube as well as to fit about a part of the periphery of the tube.

It would have been obvious to one having an ordinary skill in the art at the time the invention to provide the inside diameter of the hemicylindrical sections (clamp members) of the two bars of the Brown being smaller than the specified outside diameter (of the pipe and/or tube) by not to exceed five percent with the first straight section juxtaposed with the second straight sections, respectively as taught by Rahe in

order to allow the clamp members to be gripped with an pressure holding enough without braking the pipe/tube while the bolt is tightened down until the straight bars are juxtaposed and the clamp can be achieved to hold the pipe tightly secured.

With respect to "CPVC" pipe, CPVC is a well-known per se and commercially available material used in lightweight and durable. Accordingly, it would have been obvious to one ordinary skill in the art as a matter of engineering design choice to utilize CPVC pipe as the particular pipe because it is well-within the level of skill in the art to utilize the known features of the art for the purpose for which they are known according to its of intended use thus the selection of CPVC pipe does not produce any unexpected results and it would have been no more than an obvious matter of engineering design choice producing no new and unexpected.

With respect to the term "fragile", the term is a relative term; therefor it has no patentable significance.

With respect to claim14, claim 14-recites the feature which so called "standard" which is asumably well known by ordinary skill in the art and it's obvious that any number of different standard tubes/pipes can be used since Brown in vie w of Rahe does not prevent from using it. The standard outside diameter as specified diameter is deemed obvious over Brown in view of Rahe since the pipe of Brown in view of Rahe also appears to be the standard pipe and the standard pipe as claimed in claim 14 can be used in the device of Brown in view of Rahe.

With respect to claims 11-12, the provision of calling for the first straight section being a long straight section and the second straight section being a short straight

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section and the long straight sections each having an attachment hole closely spaced from the distal end thereof would have also been no more than an obvious matter of design choice since there are no additional teaching or criticalities from Applicant regarding of a long arm and short arm. This would have led a person of ordinary skill in the art to have had a reasonable expectation that any length (longer or shorter) and any attachment hole can be used at any desired location along the arms. In addition, the length of the long arm and short arm as claimed would have been a matter of choice in design since the claimed structure and the function they perform are the same as the prior art (functionally equivalent). In re Chu, Supra. See legal precedent regarding changes in sizes/proportion in MPEP 2144.04.

Response to Arguments

Applicant's arguments filed 2/2/07 have been fully considered but they are not persuasive.

Applicant basically argued that "there is no teaching a range of diameters relative to "the specified outside diameter" as set forth in claim 8. There must be some suggestion or motivation to combine the references of all the claimed limitations (page 6, first paragraph)... There is no teaching or suggestion that the teachings of Rahe should be incorporated into Brown...therefore, there is no basis within these two references to suggest a combination (page 7, third paragraph)..."

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These arguments are not found persuasive. The examiner respectfully submits that the range of diameters relative to "the specified outside diameter" as claimed in claim 8 is deemed to be obvious over the references of Brown in view of Rahe for the reasons as pointed out in the office action. Rahe has been applied to clearly teach the well known obvious range of diameters relative to the "the specified outside diameter". And the examiner has advanced the motivation for making the required modifications. It doesn't appear that applicant has adequately addressed this motivation.

In addition to the reasons pointed out in the office action, the examiner further contends that to provide an inside diameter smaller than the specified outside diameter by not to exceed five percent as claimed would have been also an obvious to one having ordinary skill in the art since such a modification would have involved a mere change in the range of size of component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Nevertheless, the range as selected may be selected from any range that's suitable for the intended purpose, which has no limited in Brown in view of Rahe teaching. The range as selected is also considered to be a matter of design choice and dependent upon the intended application and the configuration of the object to which the holder will be attached.

With respect to the argument that there must be showing of a suggestion or motivation to modify the teachings of that reference, this is also not found persuasive because there is no requirement that a motivation to make the modification be expressly articulated. There is also not necessary that a reference actually suggests changes,

motivation or possible improvements, which Applicant made. In re Sheckler, 438 F.2d 999, 1001, 168 USPQ 716,717 (CCPA 1971). Applicants should be noted that the test for obviousness is what the combination of reference disclosures taken as a whole would have fairly suggested to one of ordinary skill in and not whether specific features can be bodily incorporated from one reference into another. Clearly Rahe has been applied to clearly teach such. Further, a combination of references is proper for any reason taught by the prior art and that there is no requirement that a particular reference explicitly articulate this motivation.

Applicant's remarks on pages 6-7, it appears that applicant's are attempting to impart the reference of Rahe for the bodily incorporation of the parts. In particular, it appears that applicant is alleging that reliance on Rahe is improper because the structure is unrelated or different from Brown clamp members. This has not been found to be persuasive because the test for combining references is what the disclosures would have fairly suggested to one of ordinary skill in the art as a whole. A combination of references is proper for any reason taught by the prior art and that there is no requirement that a particular reference explicitly articulate this motivation.

The examiner respectfully submits that the combination of references renders the claims obvious within the meaning of Section 103. Accordingly, this action is made FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

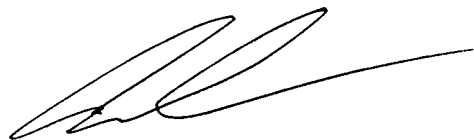
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tan Le
April 19, 2007.



Carl D. Friedman
Supervisory Patent Examiner
Group 3600